produce it, and where our examination of the testimony fails to convince us that the collision was brought about by their fault, it would be a violent construction of the statute to hold that by reason of it alone the tug should be held responsible because of an omission of duty after the collision, and that, too, in the face of a decree not appealed from, holding that, in part at least, such collision was due to the negligence of the schooner. The case would be different if there had been an absence of proof as to the collision itself,—if, for example, the crew of the schooner had not been rescued, as happily they were, and for that or other reasons there was a lack of testimony respecting it, then the failure to stay by, unless explained, would have raised a presumption that the collision was caused by the wrongful act, neglect, or default of the master of the tug. It is in such cases that the statute becomes operative and, in "absence of proof to the contrary," fastens the responsibility upon those who, failing in one duty, which was plain, may reasonably be charged with that which was doubtful. When one, disregarding cries for assistance, runs away from the scene of a crime, a strong presumption arises that he has committed it; but where there is positive proof by eye-witnesses that he did not, he cannot be convicted of it simply because he ran away, although he might be convicted of running away, if that were made a penal offense. So we construe this statute to mean that, if a master of a vessel that has been in collision with another fails to stay by her, and shows no reasonable cause for such failure, the law will presume that the collision was caused by some negligent act or omission on his part, and, in the absence of proof to the contrary, will fasten upon him the responsibility for the collision. It puts upon him the burden of showing that he was free from fault. It assumes that one who fails to offer assistance to those whose distress is caused by him is presumably at fault in the act which caused the distress, and it denounces pain and penalties against his inhumanity, and holds his ship responsible for the pecuniary fine; but it does not condemn without a hearing. The obligation imposed is not unqualified; it is carefully guarded by conditions; it permits presumptions to be rebutted by proofs, and it is only "in the absence of proof to the contrary" that his responsibility is made absolute.

In The Queen of the Orwell, 1 Marit. Law Cas. 300, the eminent Dr. Lushington thus construes the English statute:

"Now, for the penalty, or what may be called the penalty, 'in case he fails so to do, and no reasonable excuse for said failure,' it shall be attended with certain consequences which are enumerated in the enactment. The effect of that, I think, is precisely what has been stated,—that, supposing such a state of things to occur, there is thrown upon the party not rendering assistance the burden of proof that the collision was not occasioned by his wrongful act, neglect, or default. It does not go further. Assuming this case to come within the provisions of the statute, the proper question I shall have to put to you is that which I should put if no such statute at all existed,—whether this collision was occasioned by the wrongful act, neglect, or default of the steamer."

The conceded violation of any statutory requirement creates a presumption against the party in default, but this rule cannot be extended further than to hold that when an accident occurs it is obligatory upon the party who has failed to comply with the statute to

show that such default certainly did not and could not possibly contribute to the disaster.

Conceding the correctness of the conclusion of the court below that the master of the tug failed to stay by and render assistance, his conduct is to be gravely reprehended, and in a proper proceeding doubtless he may be made to suffer the penal consequences that follow the violation of the statute; but to hold that such violation makes the tug responsible, in all events, for the collision itself, is to extend its meaning beyond its plain words. While such misconduct creates the strongest presumption against it, and requires that the tug should show affirmatively that the collision was not due to its fault or neglect, when such "proof to the contrary" has been offered, we find no authority in reason or precedent for holding it responsible. The English cases under the statute are The Adriatic, 3 Asp. 16; The Vallego, Ad. Div. April 27, 1887; The Germania, 21 Law T. (N. S.) 44. The American cases are The Robert Graham Dunn, 63 Fed. 167, affirmed 17 C. C. A. 90, 70 Fed. 270; The Kenilworth, 64 Fed. 890; Towboat Co. v. Winslow, 22 C. C. A. 327, 76 Fed. 595. In all of these cases there was evidence either of some fault in addition to the failure to stay by or an absence of proof that the vessels held responsible were not in default. They are, therefore, clearly distinguishable from the case now under consideration, where the evidence showed fault on the part of the schooner sufficient to cause the collision, in her failure to provide herself with the mechanical fog horn, which the regulations require. In The Pennsylvania, 19 Wall. 137, where a bark was provided with a bell instead of a fog horn, the court says:

"How can it be proved that, if a fog horn had been blown, those on board of the steamer would not have heard it in season to have enabled them to check their speed or change their course, and thus avoid any collision? Though there were two lookouts on the steamer, each in his proper place, the bark's bell was not heard until the vessels were close upon each other. Who can say the proximity of the vessels would not have been discovered sooner if the bark had obeyed the navy regulations? * * * The truth is, the case is one in which, while the presumption is that the failure to blow a fog horn was a contributory cause of the collision, and while the burden of showing that it was in no degree occasioned by that failure rests upon the bark, it is impossible to rebut the presumption."

In The Martello, 153 U. S. 65, 14 Sup. Ct. 723, the bark was provided with a tin fog horn, not sounded by mechanical means. The proof in that case, as in this, was that one blast of the horn was heard aboard the steamer, which was proceeding at the rate of six miles an hour. The court held that, while such speed may not be excessive, even in a dense fog, upon the open ocean, a different rule applies to a steamer just emerging from the harbor of the largest port on the Atlantic coast, and found that a speed of three miles an hour was proper under those circumstances. It says: "If the barkentine had been provided with a more powerful horn, it appears to be not only possible, but probable, that more than one blast would have been heard, and the steamer thus apprised of the course and distance of the bark," and quotes with approval the opinion of Sir Robert Phillimore in The Love Bird, 6 Prob. Div. 80, to the effect